

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JASON P. HINZO,

Petitioner,

vs.

No. CIV 09-489 MCA/LFG

GEORGE TAPIA, Warden, and
GARY K. KING, Attorney General
of the State of New Mexico,

Respondents.

**ORDER GRANTING PETITIONER'S
MOTION FOR EXTENSION OF TIME**

THIS MATTER comes before the Court on Petitioner Jason P. Hinzo ("Hinzo")'s "Motion for an Extension of Time to File an Answer" [Doc. 22]. No response is necessary.

Hinzo asks that he be granted an extension of time to file an "answer" to two documents entered in this case by the Court.

The first of these is the Court's Second Order to Show Cause [Doc. 19], in which the Court notified Hinzo that only one of the several claims he raises in this federal petition is exhausted, that several claims are unexhausted, and that others have been procedurally defaulted. In that Order, Hinzo was directed to respond by demonstrating either cause and prejudice, or a fundamental miscarriage of justice, with respect to the procedurally defaulted claims.

He was also advised as to which claims were procedurally defaulted, and the standards for showing "cause" and "prejudice" were explained to him in the Order. He was further advised that if he made the requisite showing, the procedurally defaulted claims would be retained in the case; otherwise, they would be dismissed with prejudice. The deadline for responding was December 3, 2009.

Although Hinzo filed a document [Doc. 20] within the time period allowed for responding to the Second Order to Show Cause, he now asserts that this document was not, in fact, a response

to the Second Order to Show Cause and that he never received a copy of that Order. The Court was not aware, at the time, of Hinzo's allegation of non-receipt.

Because the document filed by Hinzo did not establish the required "cause and prejudice," the undersigned Magistrate Judge entered his Second Findings and Recommended Disposition [Doc. 21] on November 19, 2009, recommending that the procedurally defaulted claims be dismissed with prejudice, and that all other claims be dismissed without prejudice as a mixed petition. These Findings are the second document to which Hinzo requests an extension of time to "answer," *i.e.*, to object under 28 U.S.C. § 636(b).

The deadline for filing objections to the Second Findings and Recommended Disposition expired on December 7, 2009. Hinzo did not file objections within the allotted period, and his Motion for Extension of Time [Doc. 22] was filed after the deadline for objecting had already expired. The Court would normally deny such a motion as untimely. However, Hinzo asserts that he never received a copy of the Second Order to Show Cause, and therefore he has not been given a chance to make the showing that would save the procedurally defaulted claims.

The Court is mystified as to why this particular petitioner has had so much trouble receiving his mail when other incarcerated, *pro se* litigants have no trouble at all. Nevertheless, in an abundance of caution and in order to permit Hinzo a full opportunity to show the Court why he procedurally defaulted the particular claims outlined in the Order to Show Cause, the Court will grant him an extension of time to respond to the Second Order to Show Cause.

Hinzo is hereby notified that the procedurally defaulted claims are as follows: I(a), (b), (d), (f); II(d); III(a), (b), (c), (f), (g), (h), (i).¹

Order

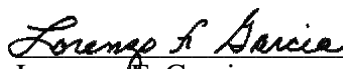
IT IS THEREFORE ORDERED that Petitioner's Motion for Extension of Time [Doc. 22] is granted.

¹Hinzo is directed to the Court's Second Findings and Recommended Disposition [Doc. 21], pp. 6-7, for an explanation as to the Court's numbering and identification of his claims.

IT IS FURTHER ORDERED that the Clerk is directed to mail a new copy of the Second Order to Show Cause [Doc. 19] and the Magistrate Judge's Second Findings and Recommended Disposition [Doc. 21] to Hinzo at his current address of record, via certified mail, return receipt requested.

IT IS FURTHER ORDERED that Hinzo will be given an extension, until January 15, 2010, within which to respond to the Second Order to Show Cause [Doc. 19]; specifically, he must demonstrate cause for his failure to petition the state supreme court for certiorari following adverse rulings on his state habeas petition and the Motion to Amend as filed in state court, and he must show prejudice. Alternatively, he must make a showing that a fundamental miscarriage of justice has occurred. The standards for making these showings are set forth in Doc. 19, at pp. 3-5. If Hinzo fails to make these showings, his procedurally defaulted claims will be dismissed with prejudice. No further time extensions will be granted.

IT IS FURTHER ORDERED that the Court's Second Findings and Recommended Disposition [Doc. 21] will not be withdrawn at this time; rather, the Court will extend the time for filing objections to those Findings, for a period of 14 days after Hinzo responds to the Second Order to Show Cause or, if does not respond, to 14 days after the deadline for responding.²


Lorenzo F. Garcia
United States Magistrate Judge

²Depending on the substance of Hinzo's response to the Second Order to Show Cause, the Court may find it necessary to withdraw the Second Findings and issue new Findings. That determination will be made at a later date.